

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1494 - HB 1491

March 25, 2021

SUMMARY OF BILL: Prohibits a public institution of higher education (institution) from: (1) preventing a student athlete from earning compensation as a result of the use of the student athlete's name, image, or likeness (NIL); (2) preventing a student athlete from obtaining professional representation in relation to contracts or legal matters; (3) entering into a contract that prevents a student athlete from using the student athlete's NIL when the student athlete is not engaged in official activities associated with the institution or an institution's athletic team; and (4) providing a prospective student athlete with compensation in relation to the student athlete's NIL.

Prohibits an institution that participates in intercollegiate athletic competition as a member institution of an athletic association, conference, or other group or organization with authority over intercollegiate athletics from penalizing a student athlete, as defined in § 49-7-2102, based on gifts, benefits, or inducements given to the student athlete or the student athlete's family by a booster.

Prohibits a student athlete from entering into a contract that provides compensation to the student athlete for use of the student athlete's NIL if a provision of the contract is in conflict with a provision of the student athlete's team contract.

Requires a student athlete who enters into a contract that provides compensation to the student athlete for use of the student NIL to disclose the contract to an official of the institution at which the student athlete participates in intercollegiate athletics. Specifies that the institution cannot punish a student for failure to disclose a contract, and that any contract that is in conflict to the student athlete's team contract must be disclosed by the institution to the student athlete's athlete agent or legal representative.

Specifies that an institution is prohibited from affecting a student's scholarship eligibility if a student is earning compensation from the use of a student's NIL.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – Approximately \$45,000,000 in recurring funding for the University of Tennessee (UT) Knoxville may be jeopardized, beginning in FY21-22, due to noncompliance with current National Collegiate Athletic Association's (NCAA) regulations. The total amount that may be jeopardized for the other two UT institutions and the Locally Governed Institutions (LGIs) is reasonably estimated to exceed \$10,000,000 per year. In addition, there may

be a recurring decrease in state revenue for UT institutions and LGIs if institutions are unable to compete in certain athletic events resulting in additional losses to ticket sales, merchandise sales, donations, and licensing agreements. Any loss of funding for UT or the LGIs is dependent upon future action by the NCAA.

Assumptions:

- Pursuant to Article 13 of the current National Collegiate Athletic Association (NCAA) bylaws, gifts, benefits, or inducements given to the student athlete or the student athlete's family by a booster is prohibited unless it is determined to be given on a basis unrelated to athletics ability.
- Pursuant to Article 12 of the current NCAA bylaws, a student athlete is prohibited from being compensated for use of his or her name, image, or likeness, and from being represented by a sports agent.
- As of April 28, 2020, the following exceptions were approved by the Board of Governors as eligible for compensation:
 - Third-party endorsements related to athletics, without school or conference involvement; and
 - Student-athlete opportunities, such as social media, new businesses, and personal appearances, without institutional involvement or the use of trademarks/logos.
- The Board of Governors further directed each of the NCAA's three divisions to update relevant bylaws and policies by January 2021; however, to date, no update to relevant bylaws or policies concerning the name, image, and likeness of student-athletes has occurred within any division.
- Passage of the proposed legislation may put each institution in direct violation of the NCAA and affiliate athletic association such as the Southeastern Conference, Ohio Valley Conference, and Southern Conference rules and regulations, which could jeopardize funding to each institution. Further, it is assumed that institutions found in violation would be ineligible to compete in the NCAA or affiliate athletic associations and as a result, lose revenue received from such competitions.
- Based on information provided by the University of Tennessee (UT), the total amount of annual Southeastern Conference funding for UT Knoxville is approximately \$45,000,000.
- The total amount that may be jeopardized for the other two UT institutions and the locally-governed institutions (LGIs) for noncompliance with NCAA regulations is reasonably estimated to exceed \$10,000,000 per year.
- There may be an additional decrease in state revenue for UT institutions and LGIs if institutions are unable to compete in certain athletic events, resulting in significant losses to ticket sales, merchandise sales, donations, licensing agreements, and broadcasting agreements.
- Any loss in funding for UT or the LGIs is dependent upon future action by the NCAA, which may also be impacted by rulings in current court cases.
- In *Alston v. NCAA*, the court ruling found that the NCAA could not limit non-cash compensation for education-related expenses. Cash or cash-equivalent awards for academic purposes may be limited. The ruling was upheld by the 9th U.S. Circuit Court

of Appeals in May 2020, a decision subsequently appealed by the NCAA and the American Athletic Conference. The Supreme Court will ultimately decide the case, with arguments scheduled to be heard on March 31st, 2021. It is unknown how the outcome of this case may impact any future action by the NCAA.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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